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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/691,399

10/22/2003

Daniel J. Cook

14/1453US

6819

22822 7590 06/25/2007

LEWIS, RICE & FINGERSH, LC

ATTN: BOX IP DEPT.

500 NORTH BROADWAY

SUITE 2000

ST LOUIS, MO 63102

EXAMINER

SELLS, JAMES D

ART UNIT

PAPER NUMBER

1734

MAIL DATE

DELIVERY MODE

06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                             |  |
|------------------------------|--------------------------------------|-----------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/691,399 | <b>Applicant(s)</b><br>COOK |  |
|                              | <b>Examiner</b><br>James Sells       | <b>Art Unit</b><br>1734     |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 31, 32 and 34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brain (US Patent 5,391,248).

Brain discloses a method of making an artificial airway device. As shown in Figs. 1-4, the method involves molding an inflatable/deflatable laryngeal mask 10 fitted to the distal end of an airway tube 11 with back plate 12, ring 13, distal and proximal ends 14 and 15, air supply line connection 17 and flexible membrane 18 which closes the lumen of the mask. See col. 4, lines 21-48. Mold 20 with base 21, bolts 22 and 26, left and right mold parts 23 and 24 are provided to receive silicone rubber or the like. This material is injected under pressure in the molding process to make the airway device in the manner claimed by the applicant. See col. 4, line 49 through col. 7, line 29.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-30, 33 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brain as described above in paragraph 2.

A conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without and specific hint or suggestion in a particular reference. *In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Therefore, without the disclosure of unexpected results, it is the examiner's position that the specific configuration of the components, materials, connection technique and heating and cooling are within the purview of one having ordinary skill in the art and would have been obvious to employ in the method of Brain as described above.

#### ***Specification***

5. In response to this office action, applicant is requested to update the continuity data on page 1, lines 3-4 of the specification to indicate that Application Serial No. 09/829,157 is now US Patent 6,705,321.

#### ***Telephone/Fax***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sells whose telephone number is (571) 272-1237. The examiner can normally be reached on Monday-Friday between 9:30 AM and 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached at (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

***Conclusion***

7. Accordingly, this action is made non-final.

A handwritten signature in black ink, appearing to read 'J Sells', with a long horizontal line extending from the end of the signature.

**JAMES SELLS  
PRIMARY EXAMINER  
TECH. CENTER 1700**